

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM PRINCE,

Plaintiff/Counter-Defendant-
Appellee,

v

TILDA PRINCE,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

September 26, 2006

No. 261686

Genesee Circuit Court

LC No. 03-246672-DO

Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by right a judgment of divorce granting 60 percent of the equity in the marital home to plaintiff. We affirm.

Defendant argues that the trial court's factual findings were clearly erroneous and that the trial court's dispositional ruling was inequitable. We disagree. We review a trial court's factual findings for clear error. MCR 2.613(C); *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). "If the trial court's findings of fact are upheld, [we] must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless [we are] left with the firm conviction that the division was inequitable." *Draggou v Draggou*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

When dividing marital assets "the conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). Although fault is a factor that may be used to determine an equitable division of marital assets, it is not "a punitive basis for an inequitable division." *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996). To reach an equitable division, the trial court should consider the following: (1) the duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Sparks, supra* at 159-160.

After several years of marriage, plaintiff filed this action for divorce. The trial court found that with a few exceptions the “parties kept their accounts separate and handled most of their bills separately.” The court also found that defendant signed plaintiff’s name “on more than one occasion to certain bills, and so forth, checks, refunds, whatever you want to call it, without [his] knowledge.” The court found that defendant was negligent in maintaining the marital property, particularly when she realized she could not obtain the financing to buy the home. The court was unable to determine that defendant intentionally caused damage to the marital home when she lived there by herself. But the court found that if defendant had complied with the court’s first order regarding the marital property the parties may have procured a higher price for the property.

Before the court rendered its ruling, the court found that defendant’s testimony lacked credibility and that some of her actions during the marriage were not “totally straightforward, honorable or honest.” The court also found that “on balance, [defendant could] be faulted more” than plaintiff. Based on its findings, the court awarded 60 percent of the marital property to plaintiff. We find neither clear error in the court’s findings, nor that its ruling was inequitable.

The trial court’s factual findings were not clearly erroneous because the evidence supported the findings. Evidence was presented which showed that the parties kept their accounts separate and that they split household expenses equally. The evidence also showed, however, that defendant was not honest with plaintiff regarding the household bills and finances. Defendant purposefully misled plaintiff regarding the household bills. Defendant told a friend that she purposefully misled plaintiff regarding the bills and that she would tell plaintiff the bills were more than they actually were. Defendant also told her friend that she would use plaintiff’s debit card without plaintiff’s knowledge and permission. Plaintiff also testified extensively regarding defendant’s unauthorized use of his debit card.

Testimony was also presented which showed that defendant removed property from the marital home during the time that plaintiff was prohibited from the property. Moreover, defendant removed property from the marital home without plaintiff’s knowledge and consent. Evidence showed that defendant signed plaintiff’s name to an insurance policy without plaintiff’s knowledge and consent. Defendant petitioned the zoning authority to divide the marital property without plaintiff’s knowledge and consent. During the time that plaintiff was prohibited from the marital home, defendant did not maintain the home and the value of the home depreciated. The trial court’s factual findings were consistent with the evidence presented, and therefore, the findings were not clearly erroneous.

In light of the facts presented, the court’s dispositive ruling was fair and equitable. “A division of property in a divorce action need not be equal, but it must be equitable.” *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Plaintiff is retired and defendant is on disability. Both plaintiff and defendant receive monthly pensions of similar amounts. Both parties contributed equally to the acquisition, maintenance and improvement of the marital home, before plaintiff’s prohibition from the home. But during the time that defendant was responsible for the marital property, she did not adequately maintain the property, which likely caused it to depreciate in value. Although defendant argues that she paid the mortgage during the time that she lived in the marital home by herself, defendant was the cause of plaintiff’s prohibition from the marital property.

During the marriage, defendant engaged in dishonest and deceptive conduct. Evidence showed that defendant used plaintiff's debit card without his permission to pay household bills that were supposed to be split equally between them. Evidence also showed that defendant cashed refund checks made out to plaintiff without his permission. Defendant signed plaintiff's name to an insurance policy without his permission and decreased the value of plaintiff's coin collection. Moreover, after defendant had plaintiff banned from the marital home, she removed property from the home without plaintiff's permission. In light of the evidence presented, the 60 percent distribution in favor of plaintiff was fair and equitable.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Patrick M. Meter